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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,182	10/06/2003	Jerry Baack	DIX006-159	2332

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 DIEDERIKS & WHITELAW, PLC
 12471 Dillingham Square, #301
 Woodbridge, VA 22192

EXAMINER

BUTLER, MICHAEL E

ART UNIT	PAPER NUMBER
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3653

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/678,182	Applicant(s) BAACK ET AL.	
	Examiner Michael Butler	Art Unit 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 19-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1,2,8-11,17 and 18 is/are rejected.
- 7) ☐ Claim(s) 3-7 and 12-16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action, and apply to this and any subsequent Office Actions.

Priority

1. Applicant's claim of priority to application 60/415745 filed 10/4/02 is made is acknowledged.

Drawings

2. New drawings will be required contingent upon allowance because the drawings were objected to by the draftsman/declared informal by the applicant.

Election/Restriction

3. Applicant's election of invention I without traverse on 6/16/2006 of the restriction requirement of 5/15/2006 is acknowledged and made final.

4. Claims 19-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3653

6. Claim(s) 1-2, 10-11 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Pollock et al. 6202888 in view of Hieb '776 (7032776) wherein the former discloses the elements previously discussed and further discloses:

(Re: cl 1,10) A vending machine comprising: a cabinet frame including top, bottom, side and rear walls that collectively define a central cavity (c4 L 1-15); a door mounted to the cabinet frame for selectively closing the central cavity; a plurality of dispensing units, each of the plurality of dispensing units being adapted to receive product containers from an associated one of the plurality of stack areas (c4 L 25-44);

(Re: cl 1) a plurality of vend motors connected to the plurality of dispensing unit, each of the plurality of vend motors including a rotatable output for selectively operating a respective one of the dispensing units to dispense the product containers (c5 L 20-66); and an electronic control unit adapted to control rotation of the output of each of the plurality of vend motors through a desired vend angle, with the desired vend angle being established based on the product container to be dispensed, electronic control unit including a memory having stored therein various predetermined vend angles corresponding to known product containers, while being programmable to retain supplementary vend angles for additional product containers (c6 L 36-c7L5; c11L 25-35)

(Re: cl 10) means for shifting the plurality of dispensing units through desired vend angles for dispensing of product containers from the plurality of stack areas (c5 L 20-66); and means for controlling the shifting means, said controlling means including a memory having stored therein various predetermined vend angles corresponding to known product containers, while being programmable to retain supplementary vend angles for additional product containers (c6 L 36-c7L5)

(Re: cl 2,11) wherein the desired vend angle for each of the plurality of vend motors can be individually set (C11 L 25-35).

The latter discloses any elements not inherently taught by the former including:

(Re: cl 1,10) a plurality of column walls defining a plurality of stack areas for storing columns of product containers to be vended (c6 L 36-c7L5; c11L 25-35).

It would have been obvious to take the teachings of Pollock on a columnar stack vending machine to control dispensing of cylindrical dispensate of varying selected diameter as taught by Heib '776 and come up with the instant invention.

Art Unit: 3653

7. Claim(s) 1-2, 8-11 and 17-18 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Pollock et al. 6202888 in view of Heib '427 (6945427) wherein the former discloses the elements previously discussed and further discloses:

(Re: cl 1,10) A vending machine comprising: a cabinet frame including top, bottom, side and rear walls that collectively define a central cavity (c4 L 1-15); a door mounted to the cabinet frame for selectively closing the central cavity; a plurality of dispensing units, each of the plurality of dispensing units being adapted to receive product containers from an associated one of the plurality of stack areas (c4 L 25-44);

(Re: cl 1) a plurality of vend motors connected to the plurality of dispensing unit, each of the plurality of vend motors including a rotatable output for selectively operating a respective one of the dispensing units to dispense the product containers (c5 L 20-66); and an electronic control unit adapted to control rotation of the output of each of the plurality of vend motors through a desired vend angle, with the desired vend angle being established based on the product container to be dispensed, electronic control unit including a memory having stored therein various predetermined vend angles corresponding to known product containers, while being programmable to retain supplementary vend angles for additional product containers (c6 L 36-c7L5; c11L 25-35)

(Re: cl 10) means for shifting the plurality of dispensing units through desired vend angles for dispensing of product containers from the plurality of stack areas (c5 L 20-66); and means for controlling the shifting means, said controlling means including a memory having stored therein various predetermined vend angles corresponding to known product containers, while being programmable to retain supplementary vend angles for additional product containers (c6 L 36-c7L5)

(Re: cl 2,11) wherein the desired vend angle for each of the plurality of vend motors can be individually set (C11 L 25-35).

The latter discloses any elements not inherently taught by the former including:

(Re: cl 1,10) a plurality of column walls defining a plurality of stack areas for storing columns of product containers to be vended (c4 L 5-26);

(Re: cl 8,17) wherein the electronic control unit is operable in various routines, including test, set selection depth and set package type routines (C2 L 4-15 ; c3 L 1-21; c3 L 44-c4 L 4; (C4 L 5-26)

(Re: cl 9,18) (8) wherein the test routine includes column vend, jog and selection switch tests (C2 L 4-15 ; c3 L 1-21; c3 L 44-c4 L 4; (C4 L 5-26).

It would have been obvious to take the teachings of Pollock on a columnar stack vending machine to control dispensing of cylindrical dispensate of varying selected diameter as taught by

Art Unit: 3653

Heib '427 and come up with the instant invention. It would have been obvious to take the teachings of Pollock operate the machine in a mode to test, set selection depth and set package type to adjust the machine for accommodation of varying dispensate as taught by Heib '427 and come up with the instant invention. It would have been obvious for Pollock operate routines to test vend, selection switches and jog to verify the reprogrammed machine is vending properly as taught by Heib '427 and come up with the instant invention.

8. Claim(s) 1-2 and 10-11 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki 6561380 in view of Pollock et al. 6202888 wherein the former discloses:

(Re: cl 1,10) A vending machine comprising: a cabinet frame including top, bottom, side and rear walls that collectively define a central cavity (2 fig 1; c5 L 58-63);

a plurality of column walls defining a plurality of stack areas for storing columns of product containers to be vended (14 fig 2; c7 L 1-16);

a door mounted to the cabinet frame for selectively closing the central cavity (c5 L 58-63);

a plurality of dispensing units, each of the plurality of dispensing units being adapted to receive product containers from an associated one of the plurality of stack areas (c8 L15-65);

(Re: cl 1) a plurality of vend motors connected to the plurality of dispensing unit, each of the plurality of vend motors including a rotatable output for selectively operating a respective one of the dispensing units to dispense the product containers (c9 L 1-18)

(Re: cl 2,11) wherein the desired vend angle for each of the plurality of vend motors can be individually set (c9 L 35-67).

The latter discloses any elements not inherently taught by the former including:

and an electronic control unit adapted to control rotation of the output of each of the plurality of vend motors through a desired vend angle, with the desired vend angle being established based on the product container to be dispensed, electronic control unit including a memory having stored therein various predetermined vend angles corresponding to known product containers, while being programmable to retain supplementary vend angles for additional product containers (c6 L 36-c7L5; c11L 25-35).

It would have been obvious for Suzuki to substitute the rotary disc programmable angle selections with an electronic controller because an electronic control makes reprogramming

Art Unit: 3653

easier and faster than opening a machine up to adjust control discs as taught by Pollock and come up with the instant invention.

9. Claim(s) 1-2, 10-11 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Pollock et al. 6202888 in view of Feltrin '823 (5799823) wherein the former discloses the elements previously discussed and the latter discloses any elements not inherently taught by the former including:

(Re: cl 1,10) a plurality of column walls defining a plurality of stack areas for storing columns of product containers to be vended (c3 L 1-11)

It would have been obvious to take the teachings of Pollock on a columnar stack vending machine to control dispensing of cylindrical dispensate of varying selected diameter as taught by Feltrin and come up with the instant invention.

Allowable Subject Matter

10. Claims 3-7 and 12-16 are objected to as being dependent claims premised upon a rejected base claim but would be allowed if the re-written in independent form or if the limitations of an allowable claim were incorporated within the independent base claim from which this claims depend or if re-written premised upon dependence from an otherwise allowable base claim.

Response to Arguments

11. The applicant's arguments have been fully considered but they are unpersuasive in overcoming the rejections.

Regarding Pollock, a stack may be either horizontally or vertically oriented. The factory programming argument is a red herring as programming at the factory is still programming. Further, supplementary vend angles are found in col. 11 25-35. Pollock discusses

Art Unit: 3653

reprogramming of the vend angles based upon real sensing information as well as different sized dispensate. The reference discloses a motor for shifting the dispensing unit and a microprocessor for controlling said dispensing as per applicant's dispensing. MPEP 2182 says means plus function language requires the same or equivalent function.

Means for Shifting dispensing units: motor. Means for Controlling the shifting: microprocessor.

The same functions claimed are performed in the reference. Applicant's broadest structure capable of performing the function is found in the reference. And the vend angles are stored in memory as claimed.

Regarding Heib '427, the vending machine tests by using vend detectors to determine if the depth has been set correctly (C4 L 5-26).

Regarding Suzuki in view of Pollock et al., Pollock et al. as previously discussed, programs the desired vend angles from its empirically determined angles and stores it.

Conclusion

12. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3653

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (571) 272-6937.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey, can be reached on (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MEK
3/29/07


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